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Supreme Court of the United States

OCTOBER TERM, 1968

No. 360

J. STERLING HALSTEAD, *Petitioner,*

v.

REFINED SYRUPS & SUGARS, INC., *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, J. Sterling Halstead respectfully prays that a *Writ of Certiorari* issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, affirming an order of the United States District Court for the District of Columbia granting Respondent's Motion for Summary Judgment dated June 13, 1967.

1. Neither the Opinion nor the Judgment in said proceeding has been printed.

2. The *Judgment of the Court of Appeals* was dated April 2, 1968.

3. A *Motion for Rehearing* was denied May 3, 1968.

4. The statutory provision believed to confer jurisdiction on this Court for the issuance of the writ in this proceeding is *Title 28 Sec. 1254 (1) U.S. Code.*

The Grounds Urged for the Issuance of the Writ

(a) The Court decided an important question of state law (N.Y.) in a way in conflict with the state and the general law on the question, and

(b) Failed to follow Rule 56(c) of the *Rules of Federal Practice,* in that it approved and affirmed the granting of a *Motion for Summary Judgment* by the *U.S. District Court,* in spite of the fact that there were "genuine issues as to material facts" shown in the record, which that *Court* proceeded to decide and to use as the basis on which to rest its opinion and decision.

The Question Presented

Whether a constructive trust should be imposed on the increase in value of 980 shares of *Corn Products Co.* stock retransferred to that corporation to fund a pension for Petitioner, a former employee of the transferror on the ground of unjust enrichment.

Statement of the Case

Petitioner was employed as counsel, General Counsel, Ass't Secretary, and Secretary of the Respondent and in the same capacities for its parent corporation, *Refined Syrups & Sugars Inc. (New York).* from 1942 to 1957, when *Corn Products Refining Company* purchased all of the assets of the latter, including all the stock of Appellee. (J.A. 2-3)

Three years prior to said purchase by *Corn Products,* these *Refined Syrups Companies* sought to institute a

Retirement Plan (J.A. 3) for their officers and employees in which Appellant's name was included (J.A. 3) but *to avoid delay in making the Plan effective and generally applicable* incident to determining the portion of Petitioner's compensation includible under the Plan, *Petitioner withdrew his name, on the agreement that other appropriate provisions would be made for Petitioner's retirement.* (J.A. 3)

When the assets of *Refined Syrups & Sugars Inc. (N.Y.)* were transferred to *Corn Products* including all the stock of Respondent, all the officers and employees of both corporations, except the Chairman of the Board, one of the Vice Presidents and Petitioner, were included in the more liberal Pension Plan of *Corn Products.*

On July 15, 1957, Petitioner's resignation was requested (J.A. 4) and Petitioner thereupon presented his claim to *Refined Syrups & Sugars, Inc. (New York),* the name of which had been changed to *R.S. & S. Liquidating Corp.,* that that corporation provide him with appropriate retirement compensation in accordance with their said agreement.

After extended negotiations among *R.S. & S. Liquidating Corporation, Corn Products Refining Company,* the Respondent and the Petitioner, *pursuant to a contract dated September 15, 1958, to provide a fund for the payment of retirement compensation (J.A. 22) to the Petitioner, R.S. & S. Liquidating Corporation retransferred 980 shares of the capital stock of Corn Products Refining Company,* previously received from that corporation, to the latter corporation. (Subsequently, the Directors of said *Corn Products Refining Company* voted to split its stock two shares for one) On *October 1, 1958,* Respondent signed an agreement

with Petitioner, providing for the payment to Petitioner of $1,000 per month, for nine years, subject to certain conditions, restrictions and the stipulation that the Petitioner would perform certain services drawn after conferences with representatives of the U.S. Bureau of Internal Revenue held for the purpose of making payments pursuant to the terms of said document, deductible for Income Tax purposes by Defendant. (J.A. 4)

These negotiations are reflected in the following excerpts from a letter dated February 13, 1958 (J.A. 45) addressed to Samuel A. McCain, the General Counsel for Corn Products Refining Company, now Corn Products Company, which inclosed early drafts of the 2 contracts. These together provided for the retransfer of the 980 shares of Corn Products stock described above in exchange for the agreement to pay Petitioner the pension of $1,000 monthly.

"February 13, 1958

* * * * * * * *

Dear Sam:

In accordance with your suggestion, I have made up, and enclose herewith, drafts of revised contracts covering the situation created by my claim against R. S. & S. Liquidating Corporation. Some provisions in these require explanation.

I have attempted to review thoroughly the decisions that might be relevant to this problem, with the following result:

The line of cases of which *Lucas* v. *Ox Fibre Brush Co.*, 281 U.S. 115, 8 AFTR 100901, P.H. 1958, par. 11 651, is the leading authority, indicate that a contract of this kind, based in part on past services and in part on services to be rendered, where no prior contract existed, is effective for tax

purposes and the payments under it deductible in the year when paid. See also, in this connection, *General Smelting Co.*, 4 T.C. 313; *Oppenheim, Inc.* v. *Cavanaugh*, 90 F.Supp. 107, 39 AFTR 468.

* * * * * *

I am not sure that I have caught your idea in the draft of the contract for R. S. & S. and Corn Products. In this I have merely set up the facts which seem to me relevant and necessary, and the action to be taken.

The contract for the Ohio corporation, however, has been changed somewhat.

You suggested in one of our phone discussions that the twelve-year certain payments in my original draft was not a desirable provision and that possibly payments for life would be better. The thought has occurred to me that you based this on the fact that reliance could not be placed on past services rendered to R. S. & S., or perhaps on the *Frook* case, *supra*. If this is in fact your basis, it will be taken care of by using services to the Ohio corporation. Moreover, Ed Freeman has shown not a little pique at the fact that superficially the payments I am asking are equal to his and I have no desire to antagonize him. I have accordingly changed the figure to thirteen years which, taking into consideration my age and Ed's, makes his contract and mine cover the same periods.

* * * * * *

It might facilitate matters if you would want to indicate the number of shares of stock you thought ought to be surrendered. Ed seems to be a bit slow about getting around to this.

With thanks for your patience and cooperation in trying to straighten out this situation,

Sincerely,

JSH:ML /s/ J. STERLING HALSTEAD"

* * * * * *

The quoted price of 980 shares of *Corn Products Refining Company* stock transferred to that corporation pursuant to the contract of September 15, 1958 with *Refined Syrups & Sugars Inc.*, at the closing of The New York Stock Exchange on that date was $46. per share, a total of $5,020. (J.A. 5)

In February 1967, Respondent advised Petitioner that neither *Corn Products* nor the Respondent, would make any pension payments to Petitioner after the last monthly payment provided in the contract dated October 1, 1958. The quoted market price of this stock of *Corn Products* on March 31, 1967, increased by a stock split up to 1960 shares, at $49½ per share, was $96,530, an increase of $51,510. (J.A. 5)

The payments made to Petitioner after adjustment for dividends and tax benefits accruing therefrom, total less than half said market value of 1960 shares of said *Corn Products Company* stock on March 1, 1967, and *unless Respondent is required to continue making pension payments to the Petitioner, said Respondent and its parent corporation or the stockholders of the latter, Corn Products Company will have been unjustly enriched to the extent of the difference between the total of said payments, after said adjustment and the said value of 1960 shares of said Corn Products Company stock on said date.*

Petitioner sued in Equity in the *United States District Court for the District of Columbia,* **to recover the 100 per cent increase in the value of the 980 shares** of the *Corn Products Company,* **so retransferred** by Petitioner's former employer to said *Corn Products Company* to provide a fund out of which to pay Petitioner a pension, **on the ground that it constituted**

unjust enrichment as to which Petitioner was entitled to relief in *Equity,* praying:

1. That Petitioner be decreed to be the owner in Equity of the balance of the fund derived from the 980 shares *of Corn Products stock* retransferred to Corn Products, after the deduction therefrom of the payments hertofore made to Petitioner.

2. That it be decreed that Respondent pay said difference to Petitioner or that it pay $1,000 per month to Petitioner until said balance is exhausted, and

3. That the Court grant such other and further relief as the Court should deem necessary or proper.

Respondent moved for Summary Judgment and to Dismiss Petitioner's Complaint.

Respondent's defense was rested on the following contentions:

1. Petitioner is suing at law to enforce a contractual obligation.

2. That there was no relation between the contract dated September 15, 1958 between Corn Products and *R.S. & S. Liquidating Corp.* and the contract of October 1, 1958 between Petitioner and Respondent.

3. That the purpose of the retransfer of the 980 shares of Corn Products stock to the latter corporation was not to provide a fund out of which to pay Petitioner's pension.

4. That the October 1, contract was solely to settle a claim for indemnity arising out of the pur-

chase by Corn Products of the assets of R.S. & S. Liquidating Corp.

The District Court, without Opinion granted Summary Judgment to Respondent.

Petitioner thereupon appealed to the United States Court of Appeals for the District of Columbia Circuit.

The Court of Appeals affirmed the Decision of the District Court.

ARGUMENT

In its opinion the Court of Appeals rests its conclusions and decision on alleged grounds involving "genuine issues as material facts".

The first of these is: that Petitioner is suing to impress a trust on **the 980 (now 1960) shares of Corn Products stock** received pursuant to 2 contracts, dated respectively September 15, 1958 and October 1, 1958.

Actually the record in this proceeding shows Petitioner's suit is for the **increase** in value accrued on that stock representing the unconscionable profit resulting from the contracts which were entered into to provide a pension for petitioner.

The Second is that the contract of September 15, 1958 under which the 980 shares of Corn Products stock was retransferred to *Corn Products* was not, the Court concludes, made for the purpose of providing a pension fund for Petitioner but solely for the purpose of indemnity.

The inference from the Court's opinion is that the corporate separation of *Corn Products* and its wholly owned subsidiary, the Respondent, precludes even a Court of Equity from requiring Respondent to dis-

gorge the unconscionable profit, realized by these corporations, **even though the record is clear that both the parent and subsidiary were parties to the general agreement made up of said contracts of Sept. 15th and Oct. 1, 1958.**

Third that Petitioner is barred from recovery in this suit, even in a Court of Equity, because he has not joined *Corn Products* as a defendant, when the record shows clearly that these 980 shares of Corn Products stock were retransferred to *Corn Products* so that Respondent would pay Petitioner's pension and Respondent has confirmed this *by actually paying the pension for 9 years and taking advantage of Petitioner's services and experience at Respondent's election* as required in Petitioner's pension contract.

The Court of Appeals also rested its opinion on a conclusion as to another question of disputed fact and law: that Petitioner's claim is barred by the Statute of Limitation and laches, both controverted by Petitioner in his Statement in Opposition * * * to the Motion for Summary Judgment (J.A. 25-26), *citing Peters v. Sutter,* 2 MacArthur (D.C. Reports Sept. 1876) and *Halliday v. Halliday,* 56 Appeals D.C. 179, 1926.

In reaching these conclusions and basing its decision on them, the Court of Appeals was deciding "genuine issues as to material facts" which should have precluded the granting of the Motion for Summary Judgment by the District Court and clearly constituted prejudicial error on the part of the Court of Appeals.

All doubts as to the existence of a genuine issue as to a material fact must be resolved against the party moving for Summary Judgment.

Zig Zag Spring Co. v. *Comfort Spring Corp.*, 89 F. Supp. 410 (D.C. N.J. 1950).

> "Summary judgment may not be given under Rule 56 of the *Rules of Civil Practice* if there is an issue presented as to the existence of any material fact . . . "

Merchant Indemnity Co. v. *Peterson*, 113 F. 2d 4, 6 (2nd Cir.).

> "Upon a motion for Summary Judgment, it is no part of the Court's function to decide the issue of fact but solely to determine whether there is an issue of fact to be tried."

Todelman v. *Missouri Kansas Pipe Line*, 130 F. 2d 1063 (3d. Cir.).

To the same general effect:

Ramsouer v. *Midland Valley Co.*, 44 F. Supp. 523 (D.C. Ark. 1942).

Sarnoff v. *Ciaglia*, 165 F. 2d 167 (3d. Cir.).

Also *Harris* v. *Tobriner*, 113 U.S. App. D.C. 10, 304 F. 2d 377 (1962).

CLEARLY THIS IS A CASE OF UNJUST ENRICHMENT REQUIRING THE IMPOSITION OF A CONSTRUCTIVE TRUST.

The following decisions and text authorities show some situations where Courts of Equity have found it necessary to disregard or supplement the provisions of express contracts and impose a constructive trust to accomplish justice and prevent unjust enrichment.

89 Corpus Juris Secundum, page 1027

> "Generally, any transaction may be the basis for creating a constructive trust where for any reason

> defendant holds funds which in Equity and good conscience should be possessed by the plaintiff. The forms and varieties of constructive trusts are practically without limit, . . . such trusts being raised, broadly speaking, whenever necessary to prevent injustice . . . " *Amherst College* v. *Ritch,* 151 N.Y. 283.

Beatty v. *Guggenheim Exploration Co.,* 225 N.Y. 180, 122 N.E. 172 (Jan. 1919). Here the employee in his contract of employment, agreed not to accept employment and not to become interested directly or indirectly in any competing business. Only the breach of the latter promise was in issue in the case.

The court held a constructive trust should be imposed, for the benefit of his employer, on the profits from a contract of the defendant with such a competing business. In his opinion, Judge Cardozo said:

> "We think therefore, that aside from the special provisions of the contract the agent became a trustee at the election of the principal . . . A constructive trust is a formula through which, the conscience of Equity finds expression when property has been acquired under circumstances that the holder of the legal title may not in good conscience retain the legal title. Equity converts him into a trustee . . . "

Herrman v. *Gleason,* 126 F. 2d 936-940, is an authority for the same equitable principle and lists the leading authorities supporting it.

> "Under the doctrine of unjust enrichment a defendant has something of value at Appellant's expense under circumstances which impose a legal duty of restitution." *American University* v. *Forbes,* 88 N.H. 17, 183 Atl. 860. See *Wilson Cyprus* v. *Atlantic Coastline R. Co.* (5th Cir., 109

F.2d 623). Ames *Lectures On Legal History,* pp. 149-166. Holdsworth's *History of English Law,* Vol. VIII, P. 92 et seq., Lawrence *Equity Jurisprudence,* Par. 738

"A person is enriched if he has received benefit and when he has been unjustly enriched at the expense of another is required to make restitution." See *Restatement of the Law.* 1 Restitution.

Grand Trunk, etc. Rwy. v. *Chicago, Indiana etc. Rwy.,* 131 F. 2d 215, (CCA 7, (1942)). In this case one of five contestants of railroad properties brought suit to recover overpayments of rental made through a mistake in the construction of the lease and after recovering was sued by one of the other co-tenants. The Court said at page 217:

"There being nothing due it, defendant railroad must have brought its suit for and recovered for plaintiff and the other lesses who had paid more than their shares. It recovered money as a trustee of the plaintiff. The money which it recovered did not belong to it but constituted a trust fund which it held for those lessees who had overpaid their share of rental."

The facts of Petitioner's case, on which he bases his suit, and the applicable law, also sustain it and justify the relief prayed, on the law of New York as to "3rd party beneficiary contracts" in that state, since the contract of September 15, 1967 between *Corn Products* and R.S.&S. Liquidating Corporation, a New York corporation, it was made in New York for the benefit of *Petitioner;* then as a resident of New York. See *Contracts for the Benefit of a Third Party,* Abbott, *New York Digest,* Vol. 8, section 187(1) and (2). *Auervach* v. *Grand Nat. Pictures,* 29 N.Y.S.2d 747.

The fact that framing the contract for retransfer of the 980 shares of Corn Products stock to *Corn Products* under the indemnity provision of an existing contract was advantageous to *the* Respondent and *Corn Products* from the standpoint of Federal Income Taxes, should not preclud a Court of Equity from granting relief to prevent Respondent and *Corn Products* from retaining a profit of more than $50,000 on their contract to pay Petitioner a pension, which *Corn Products* and Respondent, as purchasers of the Refined Syrups business, should have paid without funding and to which they have not contributed a dollar.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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